UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Pacific Gas and Electric Company	Docket Nos. ER04-688-000 ER04-688-001 ER04-689-000 ER04-689-001 ER04-690-000 ER04-690-001 ER04-693-000 ER04-693-001 Not consolidated

ORDER ACCEPTING NOTICES OF CANCELLATION AND RATE SCHEDULES, SUBJECT TO COMPLIANCE

(Issued December 3, 2004)

1. In this order, the Commission accepts the notices of cancellation and offers of settlement in the above-captioned proceedings, subject to compliance. This order benefits customers by providing for continued access to Pacific Northwest transmission capacity.

I. Background

2. On March 31, 2004, Pacific Gas and Electric Company (PG&E), the Western Area Power Administration (Western), the California Independent System Operator Corporation (CAISO), and Southern California Edison Company (So Cal Edison) submitted for filing, in the above captioned dockets, notices of cancellation of several rate schedules and submitted proposed unexecuted successor agreements to some of these rate schedules to be effective January 1, 2005.[1] PG&E requested that the Commission

[1] These schedules are listed in Appendix B.

convene technical conference procedures in order to foster resolution of issues concerning what service will be available upon termination of these rate schedules and to facilitate the consideration and possible development of a successor transmission exchange agreement.

3. On June 2, 2004, Commission staff convened a series of technical conferences in these four dockets. These eight technical conferences culminated in the filing of the offers of settlement in these proceedings on October 15, 2004. On October 21, 2004, PG&E submitted agreements referenced in the settlements.

4. On December 31, 2004, numerous contracts, including Contracts Nos. 14-06-200-2947A (Contract 2947A) and 14-06-200-2948A (Contract 2948A) between Western and PG&E will expire. Western and PG&E executed these contracts in 1967 in connection with the construction of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie), a two-line facility that runs from the Pacific Northwest through California.[2] These long-term contracts form the foundation of the relationship between Western and PG&E.

5. In 1996, California began to restructure its electric industry. As a result of this restructuring, and as required under California Assembly Bill 1890 (AB 1890), in 1998, the CAISO officially began operations. As a result, the three investor-owned utilities, PG&E, So Cal Edison, and San Diego Gas and Electric Company (SDG&E) turned over operational control of their transmission facilities and contractual entitlements to the CAISO. Therefore the use of Western's facilities under their contracts has been determined by the CAISO Tariff since 1998.

II. Notices and Interventions

6. Notices of filing of the notices of cancellation were published in the *Federal Register*, 69 Fed. Reg. 19,998 (2004), with comments, protests, and interventions due on or before April 21, 2004. Notices of intervention and motions to intervene were timely submitted by the entities listed in Appendix A to this order. In addition, motions to intervene out-of-time were filed by the CAISO and Calpine Corporation in each of the

[2] In northern California, Western owns one of the Pacific Intertie transmission lines from the Malin substation to the Round Mountain substation. PG&E controls the other line in the Pacific Intertie.

four above-captioned dockets. PG&E and the Sacramento Municipal Utility District (SMUD) filed answers in each of the four above-referenced dockets. The California Department of Water Resources (CDWR) filed an answer in Docket Nos. ER04-688-000, ER04-689-000, and ER04-690-000. Bonneville Power Administration (Bonneville) filed an answer in Docket No. ER04-693-000.

7. Notice of PG&E's filing of the settlements was issued October 19, 2004, with comments due on or before October 28, 2004 and reply comments due on or before November 2, 2004.[3] Notice of filing of the agreements was published in the *Federal Register*, 69 Fed. Reg. 65,167 (2004), with comments, protests, and interventions due on or before November 12, 2004 (November 2 Notice). The City of Vernon (Vernon) filed comments in all four dockets, the Power and Water Resources Pooling Authority and its Individual Participants (Pooling Authority) filed comments in Docket No. ER04-690-001. So Cal Edison filed comments on the agreements in Docket Nos. ER04-688-001 and ER04-693-001. In addition, on November 12, 2004, the CAISO filed an answer to SMUD's October 28, 2004 comments. On November 22, 2004, the CAISO filed an answer to So Cal Edison's and Vernon's comments. We will accept these answers because they have provided information that assisted us in our decision-making process.

III. Docket No. ER04-688-000 & Docket No. ER04-688-001

A. Notice of Termination

8. PG&E requested, in Docket No. ER04-688-000, termination of service under Contract 2947A, which expires under its own terms on January 1, 2005.[4] Contract 2947A is a transmission exchange contract that provides Western with 400 MW of bi-directional transmission service between Round Mountain and Western's Tracy substation. In turn, Western provides the Companies with bi-directional transmission service between Malin and Round Mountain at the full capability of Western's 500 kV line, less the amount (up to 400 MW) reserved for Western's use. As stated above, since 1998 the use of Western's facilities under Contract 2947A has been determined by the CAISO.

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[3] See Appendix A for a list of parties filing comments and reply comments.

[4] Contract 2947A is among Western, PG&E, SDG&E and So Cal Edison (collectively Companies).

9. PG&E explains that a portion of one of the 500 kV lines is owned by Western (between Malin and Round Mountain). PG&E owns the remainder of that line, as well as the other line from Round Mountain north to Indian Spring. PacifiCorp owns the segment from Indian Spring to Malin. PG&E also owns the Round Mountain substation, but Western owns an interest in a minority of facilities at the substation through a related Round Mountain Operations & Maintenance (O&M) Contract. PG&E states that the Round Mountain O&M Contract provides for the partial ownership and use by Western of certain facilities at Round Mountain, and for PG&E to install, operate, maintain, and replace those facilities. The Western substation facilities consist of a 500/230 kV transformer bank and related facilities associated with termination of both the Western 500 kV line from Malin and a single Western-owned 230 kV line from the Cottonwood substation. There is a similar Cottonwood O&M Contract which provides for PG&E's installation, operation, maintenance, and replacement of certain facilities needed to connect the Western 230 kV line from Round Mountain substation.

10. Contract 2947A is due to expire January 1, 2005, as are the Round Mountain and Cottonwood O&M Contracts. Upon termination of these O&M contracts, Western is required to disconnect its 500 kV and 230 kV lines from the substation. However, the Parallel Operations Agreement filed in Docket No. ER04-690-001 provides that these and all other current interconnections between PG&E's and Western's electric systems will remain in place.

B. Offer of Settlement

11. Under the settlement, the rate schedules underlying Contract 2947A will be cancelled and replaced by a new contract, the Transmission Exchange Agreement. PG&E contends that the Transmission Exchange Agreement differs from Contract 2947A in several ways. First, the CAISO, rather than the Companies, will provide transmission service to Western.[5] In addition, no transmission rates, administrative charges or congestion charges will be paid for the transmission service provided by either party receiving exchanged service, and the limited charges payable for the use of such service are specified in the contract. PG&E will also have certain rights to participate in proposed capacity upgrades of Western's Malin-Round Mountain 500 kV line, provided that PG&E agrees to pay for that participation, proportional to the service Western will provide to the CAISO using that line.

[5] PG&E and Western will retain ownership over their respective facilities. If the CAISO no longer has operational control of PG&E's facilities at any time during the 20-year term of the Transmission Exchange Agreement, PG&E will provide service to Western.

12. The parties state that if Contract 2947A terminates without an immediate transition to the Transmission Exchange Agreement, the result will be more expensive and less efficient provision of transmission service to the CAISO, Western, PG&E and their respective customers for several reasons. First, they state that the Western Malin-Round Mountain 500 kV line would not necessarily be part of the CAISO controlled grid. This would cause customers in the CAISO control area to pay pancaked rates for transactions with the Pacific Northwest, whereas only one rate is paid currently. In addition, they state that without the proposed Transmission Exchange Agreement, Western proposes to collect substantial amounts annually in rates for the use of its Malin-Round Mountain 500 kV line. The parties also contend that if Contract 2947A terminates without a replacement in place, 1,200 MW of capacity currently available north-to-south for use by CAISO customers, in accordance with the CAISO Tariff, would no longer be available.

13. The parties also argue that without a successor to Contract 2947A, the CAISO's access charge will increase due to a lack of CAISO transmission access charge revenues currently associated with Western's Malin-Round Mountain line. Finally, the parties argue that without the Transmission Exchange Agreement, in order to have a complete path for power transfers between the Pacific Northwest and central California, Western was planning to acquire or, if necessary, condemn major PG&E facilities, something the Transmission Exchange Agreement avoids by providing access to that path under agreed-upon terms.

14. The parties contend that to the extent transmission service provided to either party under the Transmission Exchange Agreement provides for use of CAISO-controlled grid or Western's facilities under terms different from those generally applicable under the CAISO Tariff or Western Open Access Transmission Tariff (OATT), the parties submit that it is warranted due to the unique circumstances and benefits of the agreement. The Transmission Exchange Agreement will enable the CAISO to directly access 1,200 MW of import-export capacity to the Pacific Northwest (less in the south-to-north direction) as part of its open access service to utilities serving the vast majority of California's customers. The parties state that the only alternative to the Transmission Exchange Agreement that could offer comparable benefits at a roughly comparable cost is if Western were to become a Participating Transmission Owner under the CAISO's Transmission Control Agreement. Western, however, has considered that alternative in a public decision making process and rejected it in favor of forming a sub-control area in the SMUD control area. Thus, this alternative is not available.

15. The parties state that the applicable standard of review for future review of this settlement is the public interest standard of review.

C. The Transmission Exchange Agreement

16. Under the terms of the new Transmission Exchange Agreement, Western shall provide the CAISO 1,200 MW (north to south) and 919 MW (south to north) between the Malin and Round Mountain substations of the Pacific Intertie. The portion of the Pacific Intertie owned by Western shall remain in the CAISO control area for the term of the agreement. However, as the CAISO states in its transmittal letter in Docket No. ER05-155, "the PACI-W is not part of the ISO Controlled Grid."[6]

17. Western's use of transmission capacity in the Pacific Intertie, when associated with the use of Western Capacity[7] shall be deemed delivered or received entirely at Western's Tracy substation, although such use may result in actual power flows at other interconnection points between the PG&E and Western systems, and/or an interconnected third party.

18. The only charges that may be imposed on the Western Capacity by the CAISO, either directly or indirectly, whether in existence as of the effective date of the agreement or created in the future, are for Ancillary Services and losses, and only to the extent that such services and losses are not self-provided by Western. The CAISO shall not impose any charge on Western for administration or transmission usage.

19. In addition, if Western sells unused capacity, the purchaser will be afforded the same cost treatment by the CAISO as Western receives for that capacity. Western shall be responsible for scheduling the use of the transmission with the CAISO on behalf of the purchasers. Western, however, desires to sell Western Capacity without scheduling the capacity, but understands the CAISO needs to automate a cost allocation process to do so.

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[6] Initial filing of the California Independent System Operator Corporation, Docket No. ER05-155-000, page 4 (November 1, 2004). The PACI-W is the portion of the Pacific Intertie owned by Western.

[7] The Transmission Exchange Agreement defines Western Capacity as "The transmission service provided to Western by the CAISO under Section 6.2" of the Agreement. Under section 6.2, the CAISO shall provide Western 400 MW of transmission service north to south and 306 MW south to north between the Round Mountain and Tracy substations. PG&E Original Rate Schedule FERC No. 231, Original Sheet No. 15.

The CAISO has agreed to use its best efforts to automate such a process, or to implement a manual process if it is unable to automate the process.[8] Alternatively, if the purchaser agrees to be subject to all CAISO Tariff charges except congestion, the Grid Management Charge (GMC) congestion component, and the transmission access charges, Western shall not be responsible for scheduling the capacity, but will contact the CAISO.

20. As part of the Transmission Exchange Agreement, Western shall make available to the CAISO that amount of Western Malin-Round Mountain Capacity not scheduled by Western or its transmission users by the close of the CAISO Hour-Ahead Market, or other comparable time if there is not an Hour-Ahead Market.

21. The Transmission Exchange Agreement provides the CAISO with similar rights as Western. Specifically, the only charges that may be imposed on CAISO Capacity by Western, either directly or indirectly, whether in existence as of the Effective Date of the Agreement or created in the future, are for Ancillary Services and losses, and only to the extent that such services and losses are not self-provided by the CAISO. Western shall not impose any charge on the CAISO for administration or transmission usage.

22. Finally, the Agreement states that the CAISO shall not impose on PG&E any charges for service provided to Western. However, this exemption shall not apply to charges imposed on PG&E solely as a result of receiving service under the CAISO Tariff, including the use by PG&E of CAISO Capacity or Western Capacity.

D. Initial Comments

23. The Transmission Agency of Northern California (TANC) states that the Commission should accept all agreements as a package and urges the Commission to allow the new agreements to become effective on January 1, 2005. Western and the Lassen Municipal Utility District (Lassen) support the offers of settlement in Docket Nos. ER04-688-000, ER04-690-000, and ER04-693-000, contingent upon the approval of all three offers.

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[8] The Transmission Exchange Agreement does not indicate who will be responsible for the cost of such an automated process. We will address this issue at such time as the parties seek to recover these costs.

24. The Northern California Power Agency (NCPA) filed the same comments in each of the four dockets. While it does not challenge any particular aspect of the agreements at issue in the offers of settlement, or the acceptance of the settlements, NCPA expresses concern that the CAISO framework discourages load serving, load following entities from reliable and economical operating practices and discourages generators from participating in the CAISO market.

25. Vernon also filed the same comments in each of the four dockets. Vernon's comments relate to the substance of the settlement in Docket No. ER04-693-001 and will be discussed in the context of that proceeding.

26. So Cal Edison opposes the settlement. It states that although it supports the cancellation of Contract 2947A, the Commission should reject the Transmission Exchange Agreement or, in the alternative, establish an evidentiary hearing.

27. First, So Cal Edison contends that the CAISO and PG&E must file the Transmission Exchange Agreement under section 205 of the Federal Power Act.[9] So Cal Edison states that in its initial filing in Docket No. ER04-688-000, PG&E submitted a notice of cancellation of contract 2947A, but the notice did not include any mention of a replacement agreement (*i.e.*, the Transmission Exchange Agreement). So Cal Edison argues that the Commission's regulations set forth in 18 C.F.R. Part 35, specifically 18 C.F.R. § 35.1 and 35.3, have not been met.

28. So Cal Edison argues that the CAISO cannot provide non-tariff transmission service under the Transmission Exchange Agreement without first amending the CAISO Tariff and the Transmission Control Agreement. It states that it is unaware of any provision in the CAISO Tariff authorizing the CAISO to further encumber the CAISO grid in a manner not consistent with its own tariff.

29. So Cal Edison maintains that under the Transmission Exchange Agreement the CAISO would acquire up to 1,200 MW of transmission service from Western using Western's facilities. So Cal Edison further states that the CAISO intends to exercise operational control over this transmission service. Since Western does not intend to

[9] 16 U.S.C. § 824d (2000).

become a Participating Transmission Owner under the CAISO Tariff, So Cal Edison argues that there is no authority in the CAISO Tariff or the Transmission Control Agreement that grants the CAISO authority to exercise operational control over the service received from Western, conduct any transactions over facilities that are not subject to CAISO operational control, or enter into agreements with third parties to purchase transmission service.

30. So Cal Edison argues that Commission policy requires the CAISO to offer non-discriminatory, open access transmission service to all customers. So Cal Edison further states that under the Transmission Exchange Agreement, Western would receive preferential treatment since it would receive firm service in the Day-Ahead and Hour-Ahead markets without having to bid, and would be exempt from congestion charges, scheduling charges, and other CAISO charges. So Cal Edison states that the CAISO Tariff provides for transmission service scheduled entirely on a Day-Ahead and Hour-Ahead basis and does not provide for long-term service contracts except for those that pre-date the start of CAISO operations.

31. So Cal Edison also contends that any exception to an open access tariff should be based on a principled distinction between the normal case and the exception. So Cal Edison asserts that creating exceptions could result in an un-level playing field and discriminatory transmission access.

32. So Cal Edison concludes that although it believes the parties do not have authority to enter into the Transmission Exchange Agreement, So Cal Edison does recognize that the exchange has unique characteristics that are not present in other potential capacity exchanges. Accordingly, So Cal Edison requests that if the Commission should decide to accept the Transmission Exchange Agreement, the Commission order should specifically cite these characteristics that make the Transmission Exchange Agreement a unique arrangement. In addition, So Cal Edison requests that the Commission should find that its approval does not establish precedent for any future arrangements over the CAISO grid that may be proposed in the future.

33. Powerex Corp. (Powerex) raises two concerns with the Transmission Exchange Agreement. First, Powerex states that under section 8.1.1 of the Transmission Exchange Agreement there is no option for third party purchasers to schedule excess Western capacity until the CAISO automates a process to afford third party purchasers the same cost treatment afforded Western.[10] Powerex states that the CAISO should be required to

[10] Under section 7.4 of the Transmission Exchange Agreement, Western is charged only ancillary services and losses for scheduling its capacity.

implement a manual process effective January 1, 2005, until such time as the CAISO automates the process, or indefinitely, if automation cannot be accomplished. Second, Powerex states that it is unclear how the Transmission Exchange Agreement may be treated under the CAISO's new Market Redesign and Technology Upgrade proposed in Docket No. ER02-1656-000 *et al*. Powerex states that the CAISO and the other settling parties should be required to describe how the Transmission Exchange Agreement will be treated under the new market design.

E. Reply Comments

34. The CAISO, PG&E, and SMUD object to the argument that the inclusion of the Transmission Exchange Agreement in the offer of settlement violates the prior notice requirements of section 205. They argue that So Cal Edison, as a party to the technical conference proceedings, was aware that PG&E, CAISO, and Western were negotiating an exchange agreement as successor to Contract 2947A. The draft was circulated to the parties, including So Cal Edison, in advance of the filing and the actual agreement was filed on October 21, 2004, more than 60 days in advance of the effective date. In addition, the CAISO points out that the public notice of the technical conference dated May 21, 2004, specifically identified successor agreements as matters to be considered.

35. PG&E also argues So Cal Edison had notice from the day PG&E made its initial filing in this docket. In addition, PG&E announced to all interested parties that a contract was one goal of the technical conferences it sought from the Commission. PG&E requests that the Commission waive its notice period requirements under 18 C.F.R. Part 35 and deem the Settlement filing, including the Transmission Exchange Agreement, to constitute a filing under section 205.

36. In response to So Cal Edison's concern about the CAISO's authority to enter into the settlements, the CAISO states that its authority derives from its status as a California corporation and a public utility, not from its Tariff. In addition, the CAISO argues that neither the Tariff nor the Transmission Control Agreement precludes Commission approval of the Transmission Exchange Agreement. The CAISO states that it must use its rights of operational control to optimize the use of the facilities made available to it by the participating transmission owners. In the instant case, the CAISO and PG&E developed the Transmission Exchange Agreement to provide the same nondiscriminatory access as existed previously under Contract 2947A, without pancaked transmission rates.

37. The CAISO states that the Transmission Exchange Agreement is a new encumbrance[11] on PG&E's facilities, which is specifically authorized by section 4.4.3 of the Transmission Control Agreement. In addition, the CAISO maintains that Commission approval of the Transmission Exchange Agreement is consistent with the CAISO's existing authority to exercise operational control over PG&E's facilities. The CAISO states that its authority to exercise operational control over facilities owned by Western could also be compared to a CAISO entitlement as recognized by the Transmission Control Agreement and the CAISO Tariff. Since Western is not a Participating Transmission Owner, there is no mechanism, absent the Transmission Exchange Agreement, to make this capacity available for use by the CAISO's market participants.

38. The CAISO contends that So Cal Edison does not dispute the benefits associated with the Transmission Exchange Agreement. It argues that the Transmission Exchange Agreement preserves the CAISO's transmission capacity link to resources in the Pacific Northwest without making arrangements through multiple transmission providers at pancaked transmission rates. As explained by Western, it is an artifact of history that the lines were constructed so that ownership for different segments was divided between Western and the California investor-owned utilities. According to the CAISO, these unique circumstances justify the Transmission Exchange Agreement as fair and reasonable and consistent with the public interest.

39. In its reply comments, PG&E states that So Cal Edison's objections to the Transmission Exchange Agreement are groundless and that rejection of the agreement would threaten all three offers of settlement. PG&E further states that So Cal Edison has not asserted any harm to the public interest or raised issues of material fact concerning the agreement. PG&E argues that So Cal Edison's concerns are based on a misunderstanding of existing contracts, tariffs and the filed rate doctrine.

[11] An encumbrance is a legal restriction or covenant binding on a Participation Transmission Owner that affects the operation of any transmission lines or associated facilities and which the CAISO needs to take into account in exercising Operational Control over such transmission lines or associated facilities if the Participating Transmission Owner is not to risk incurring significant liability. *See* FERC Electric Tariff No. 7, Original Sheet No. 175.

40. PG&E argues that there is no conflict between the Transmission Exchange Agreement, the CAISO Tariff and the Transmission Control Agreement. PG&E points out that So Cal Edison has not cited any provision in the CAISO Tariff or the Transmission Control Agreement that prohibits the proposed exchange service. PG&E also argues that there is nothing unlawful about having more than one tariff or rate schedule on file with the Commission.

41. PG&E states that So Cal Edison has not shown that the exchange by Western of 1,200 MW of congestion charge-free access to the CAISO does not adequately compensate the CAISO for 400 MW exchanged by the CAISO. PG&E also states that the approval of the proposed agreement is not contrary to the Commission's open access policies. PG&E argues that without the Transmission Exchange Agreement, customers would be required to pay an extra charge to Western in order to have the same amount of access to the Pacific Northwest.

42. PG&E asserts that So Cal Edison's concern that approval of the Transmission Exchange Agreement establishes precedent is misplaced. First, PG&E notes that the offer of settlement expressly binds the parties to treating the settlement as non-precedential. Second, PG&E contends that settlements resulting from good faith negotiations do not obligate the parties to offer similar terms to other parties.[12]

43. PG&E and the CAISO state that Powerex's comments should be rejected. PG&E states that the Transmission Exchange Agreement gives the CAISO until January 1, 2006 to develop an automated system. According to the CAISO, in the interim, Western has agreed to be the Scheduling Coordinator for the transactions across the Pacific Intertie and, if the transaction continues in the CAISO control area, Western will perform an inter-Scheduling Coordinator trade.

F. <u>November 12 Comments and Answers</u>

44. So Cal Edison continues to oppose the Transmission Exchange Agreement filed in Docket No. ER04-688-001. Specifically, it reiterates its concern that transmission should not be offered outside of the CAISO controlled grid and that the Transmission Exchange Agreement would allow the CAISO to provide discriminatory transmission service to Western rather than having Western compete for open access transmission service on a Day-Ahead or Hour-Ahead basis like other market participants.

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[12] *Citing Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir.), *cert. denied,* 469 U.S. 917 (1984).

45. So Cal Edison also objects to the Transmission Exchange Agreement on the grounds that the 1,200 MW of capacity the CAISO is obtaining from Western under the Transmission Exchange Agreement will not form part of the CAISO-controlled grid, which So Cal Edison asserts is different from the arrangement under Contract 2947A.[13] Further, So Cal Edison is concerned that if the capacity is not part of the CAISO-controlled grid, there is no tariff on file to govern its use. So Cal Edison also states that the November 2 Notice satisfied its concern that the Transmission Exchange Agreement was not noticed.

46. In its answer to SMUD's comments, the CAISO asserts that the arguments SMUD put forth are without merit and should be rejected. The CAISO claims that SMUD is not similarly situated to Western. In particular, the ownership and transmission exchange provisions of the original agreement between PG&E and Western are fundamental to their integrated systems. SMUD brings no such considerations to the table.

47. In its November 22, 2004 answer, the CAISO states that the Transmission Exchange Agreement is not unduly discriminatory. In addition, the CAISO states that it continues to believe that it has the authority to have operational control over the 1,200 MW it is receiving from Western. However, the CAISO offers to amend its tariff to provide that the 1,200 MW it is entitled to under the Transmission Exchange Agreement is deemed to be a part of the CAISO-Controlled Grid and asks that the Commission order a compliance filing to do so.

G. Discussion

48. The Commission finds the settlement is just and reasonable. Accordingly, we accept the proposed notice of cancellation of PG&E Rate Schedule 35 and So Cal Edison Rate Schedule 37 and related rate schedules and contracts and accept the settlement, including the proposed new Transmission Exchange Agreement, to be effective January 1, 2005.

49. We find that when the Transmission Exchange Agreement is viewed in its entirety, substantial benefits result from the settlement offer and the Transmission Exchange Agreement, as PG&E enumerated. These benefits include the CAISO's nominal access to 1,200 MW of import-export service to the Pacific Northwest, which will be available under the CAISO Tariff. The Transmission Exchange Agreement is a unique agreement which is beneficial to all parties and, thus, we will accept the Transmission Exchange Agreement.

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[13] This information was presented in the CAISO's transmittal letter in Docket No. ER05-155-000.

50. As stated above, the Transmission Exchange Agreement provides substantial benefits to the CAISO, Western, PG&E, and their respective customers. First of all, it will eliminate the potential for rate pancaking between the CAISO control area and the Pacific Northwest that would occur with the cancellation of Contract 2947A and the absence of the Transmission Exchange Agreement. The CAISO, rather than the Companies, will provide transmission service to Western between Round Mountain and Tracy substations, as a result of the CAISO's operational control of PG&E's transmission facilities used to provide this service. Further, parties to the exchange agreement will not be subject to additional charges.

51. We reject as moot So Cal Edison's argument that the filing of the Transmission Exchange Agreement does not meet statutory requirements because it was not properly noticed. So Cal Edison stated, in its November 12, 2004 comments, that its concerns were satisfied by the November 2 Notice.

52. The Commission agrees with So Cal Edison that the CAISO Tariff needs to be modified to reflect the Transmission Exchange Agreement. The CAISO, in its November 22, 2004 answer, agrees and is therefore directed to make a compliance filing, within 30 days of the issuance of this order, to amend the CAISO Tariff to provide that the 1,200 MW of capacity that the CAISO is entitled to under the Transmission Exchange Agreement is deemed to be a part of the CAISO controlled grid for the provision of transmission service on that capacity. Further, the CAISO is directed to identify, by tariff provision, the relevant terms and conditions of the CAISO Tariff that apply to this service.

53. We do not find that the Transmission Exchange Agreement is unduly discriminatory, but rather we find it to be just and reasonable. Here we have two 500 kV lines that operate in parallel and transmit power into two different control areas in California. In addition, in this proceeding, we have the exchange of capacity for the benefit of Western's and CAISO's customers and enhanced reliability resulting from seamless operation of parallel operating systems. Although Western would receive exchange service outside the terms and conditions of the CAISO Tariff, there are substantial benefits accruing to the CAISO customers, *i.e.*, in exchange for 400 MW of capacity between the Round Mountain and Tracy substations, the CAISO would receive 1,200 MW of capacity between Malin and Round Mountain substations, the portion of the Pacific Intertie belonging to Western. Under the terms of the settlement, capacity under the control of the CAISO is subject to the terms and conditions of the CAISO Tariff. Accordingly, both parties would continue to be able to access power available from the Pacific Northwest and ensure reliability. Significantly, both the CAISO and Western would have operational control over capacity exchanged and made available to them under the Transmission Exchange Agreement. Such capacity would then be available to transmission customers under either the CAISO Tariff or Western's OATT.

54. We note that approval of the Transmission Exchange Agreement would eliminate the requirement for transmission customers to pay pancaked rates for transmission service. Without the Transmission Exchange Agreement, upon termination of Contract 2947A, the 400 MW of capacity over the Pacific Intertie would become part of the CAISO controlled grid and would become available under the CAISO Tariff, while the 1,200 MW of capacity from Malin to Round Mountain would be under Western's control and become available to customers under Western's reciprocal open access tariff. Accordingly, CAISO customers would pay Western a rate for transmission service between southern Oregon and northern California, in addition to the CAISO rates for transmission service within California. Similarly, the Western customers would pay rates for service across two systems.

55. The Transmission Exchange Agreement enables the CAISO to access 1,200 MW of capacity made available by Western and allows the CAISO continued access to import capacity from the Pacific Northwest. We agree with the settling parties that the only alternative to the Transmission Exchange Agreement that could offer comparable benefits would be for Western to become a Participating Transmission Owner under the CAISO's Transmission Control Agreement. This would likely be the best option. However, as previously stated herein, Western has considered that alternative and rejected it in favor of forming a sub-control area in the SMUD control area. Since this alternative is not available, the proposed Transmission Exchange Agreement allows the CAISO continued access to this important capacity and vital link to the Pacific Northwest.

56. We disagree with Powerex that the CAISO should be required to implement a manual process to schedule excess Western capacity effective January 1, 2005 until such time as the CAISO automates the process, or indefinitely, if automation cannot be accomplished. As PG&E notes, Powerex has offered no justification for revising the agreement between the parties. In addition, Western has agreed to be the Scheduling Coordinator for the transactions across the Pacific Intertie and to perform inter-Scheduling Coordinator trades if a transaction continues in the CAISO control area. Thus, Western and the CAISO have ensured that any excess capacity will be able to be scheduled.

57. With respect to Powerex's request regarding the relationship of the Transmission Exchange Agreement to the CAISO's new market design, we note that the Market Redesign and Technology Upgrade is currently under review in Docket No. ER02-1656. In that proceeding, the CAISO must reflect the Transmission Exchange Agreement and the transmission capacity it makes available.

IV. Docket No. ER04-689-000 & Docket No. ER04-689-001

A. Notice of Termination

58. PG&E requested, in Docket No. ER04-689-000, termination of service under the Contract Between California Companies and State of California Department of Water Resources (CDWR) For Extra High Voltage Transmission and Exchange Service (CDWR EHV Contract)[14] and the Contract Between California Companies and Sacramento Municipal Utility District For Extra High Voltage Transmission and Exchange Service (SMUD EHV Contract)[15] which were also entered into as part of a set of contracts related to the construction and use of the Pacific Intertie. These contracts expire by their own terms on January 1, 2005.[16] PG&E states that on January 6, 2004, it notified CDWR and SMUD in writing of its intent to make a filing to cancel service.[17]

59. Under the CDWR EHV Contract, the Companies provide CDWR with 300 MW of bi-directional transmission service between the California-Oregon border and various transmission substations. Under the SMUD EHV Contract, the Companies provide SMUD with 200 MW of bi-directional service between the California-Oregon border and SMUD's electric system. PG&E stated that these services enabled CDWR and SMUD to purchase, sell, and exchange power with entities in the Pacific Northwest and entities accessible via the Pacific Northwest's transmission system.

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[14] PG&E Rate Schedule FERC No. 36 and So Cal Edison Rate Schedule FERC No. 38. So Cal Edison filed a Certificate of Concurrence with this filing. The "California Companies" involved in this contract are PG&E, SDG&E and So Cal Edison (collectively, the Companies).

[15] PG&E Rate Schedule FERC No. 37 and So Cal Edison Rate Schedule FERC No. 39.

[16] *See* Article 42 of the CDWR EHV Contract and Article 34 of the SMUD EHV Contract.

[17] Upon notice by PG&E that it was going to file to cancel the SMUD EHV contract, SMUD filed a complaint in Docket No. EL04-2-000 requesting an order directing PG&E to continue providing the same amount of firm bi-directional service for an additional 20 years beyond the termination date. CDWR intervened in that docket requesting the same relief. The Commission denied this complaint. *Sacramento Municipal Utility District*, 105 FERC ¶ 61,358 (2003), *reh'g denied* 107 FERC ¶ 61, 237 (2004).

60. PG&E states that there is replacement service available to both CDWR and SMUD, should the EHV Contracts be terminated. According to PG&E, both CDWR and SMUD have other contracts, which do not terminate in the near future, through which their electric systems are connected with PG&E's system. PG&E contends that these agreements, together with the CAISO Tariff, assure that both CDWR and SMUD will be able to continue to transfer power between the Pacific Northwest and their systems in the same manner as all other CAISO customers.

61. The EHV Contracts are currently recognized as encumbrances on the CAISO's use of PG&E's transmission facilities for open access service. Therefore, upon cancellation of PG&E Rate Schedule FERC Nos. 36-37 and So Cal Edison Rate Schedule FERC Nos. 38-39, the Transmission Control Agreement between the CAISO and its Participating Transmission Owners will be amended to reflect the end of those encumbrances. The Responsible Participating Transmission Owner Agreement will be amended similarly. PG&E states that amendments to these agreements will be filed with the Commission prior to January 1, 2005.

B. Offer of Settlement

62. On October 15, 2004, PG&E and the CDWR submitted a settlement in Docket No. ER04-689-001. The settlement would modify Amendment No. 4 to the Comprehensive Agreement between PG&E and CDWR (Amendment No. 4) to provide revised terms regarding Remedial Action System compensation and other such modified terms as are appropriate due to termination of the CDWR EHV Contract (Amended and Restated Amendment No. 4).[18] PG&E and CDWR request that the Commission accept, without modification, Amended and Restated Amendment No. 4 as effective upon termination of the CDWR EHV Contract on January 1, 2005. The existing Amendment No. 4 required the parties to negotiate, prior to termination, revised terms for compensating CDWR for providing a Remedial Action System. PG&E and CDWR state that the settlement does not resolve any issues other than the compensation under the Remedial Action System and does not resolve any other issues they may have with respect to the Remedial Action System or Amendment No. 4.

63. The parties state that the applicable standard of review for future review of this settlement is the just and reasonable standard of review.

[18] PG&E First Revised Rate Schedule FERC No. 77, First Revised Sheet Nos. 115–41. The Remedial Action System is a special protection system which automatically initiates one of more specially preplanned remedial actions to provide acceptable performance of PG&E's electric system following a system event.

C. Initial Comments

64. TANC, Vernon, NCPA, and the California Public Utilities Commission (California PUC) each filed one set of comments to cover each of the four dockets. Their comments do not raise issues related to Amendment No. 4 and thus are not repeated here.[19]

65. CDWR supports Commission approval of the settlement in Docket No. ER04-689-000 without modification. According to CDWR, the settlement provides certain continued compensation to CDWR for the Remedial Action System which supports the capacity ratings of Paths 15 and 66, provided under a comprehensive agreement with PG&E.

66. SMUD filed a supplement to its motion to intervene, protest and request for hearing in Docket No. ER04-689-000. SMUD requests that the Commission suspend PG&E's proposed notice of cancellation of the SMUD EHV Contract for five months and either order the CAISO to negotiate a successor agreement with SMUD for firm service rights similar to those granted Western under the Transmission Exchange Agreement or, in the alternative, establish hearing procedures to establish the parameters of a comparable arrangement.

67. SMUD states that the CAISO Tariff does not provide for long-term firm transmission service, and therefore there is no comparable substitute for the service presently rendered under the SMUD EHV Contract. In addition, SMUD argues that it would be discriminatory to terminate firm long-term service under its EHV Contract when the CAISO is willing to offer such service to Western. SMUD notes that the Commission previously has rejected SMUD's complaint that PG&E denied SMUD a right of first refusal. However, SMUD contends that the issue in this notice of cancellation proceeding is not whether SMUD has a right of first refusal under its EHV Contract, but whether cancellation of service would be consistent with the public interest.

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[19] These parties filed the same comments in each of the four dockets. TANC and NCPA's comments are discussed under Docket No. ER04-688-000 and ER01-688-001; Vernon's comments relate to the substance of the settlement in Docket No. ER04-693 and will be discussed in the context of that proceeding; and the California PUC's comments are addressed under Docket Nos. ER04-690-000 and ER04-690-001.

68. SMUD states that it does not object to the proposed Transmission Exchange Agreement, but argues that since it and Western are similarly situated, SMUD should be granted a comparable service.[20] SMUD argues that the Commission should reject the CAISO's contention that it offered Western long-term service in exchange for valuable transmission capacity from Western. SMUD alleges that it offered to exchange some of its existing transmission capacity in exchange for a contract similar to the Transmission Exchange Agreement. SMUD argues that the nature and value of the exchange it offered raise issues of material fact that warrant a hearing.

D. Reply Comments

69. In its reply comments, the CAISO states that circumstances of the Transmission Exchange Agreement are distinguishable from that of SMUD. According to the CAISO, even SMUD recognizes it is not similarly situated to Western. It argues that rather than filling a vital link in a transmission path, SMUD wanted to "pay PG&E's filed transmission rate in lieu of providing the exchange service offered by Western."

E. Discussion

70. The Commission finds the settlement is just and reasonable. Accordingly, we accept the proposed notice of cancellation of the PG&E Rate Schedules 36-37 and So Cal Edison Rate Schedules 38-39 and accept the proposed Amended and Restated Amendment No. 4, to be effective January 1, 2005.

71. We will deny SMUD's request for a hearing. As an initial matter, the Commission previously denied a complaint filed by SMUD alleging the California utilities' refusal to honor a request by SMUD to extend the term of service under the SMUD EHV Contract.[21] In that order, the Commission stated that Order No. 888's right of first refusal provision does not contemplate contract extension beyond the term of the relevant contract and concluded that SMUD would have to take service under the CAISO Tariff upon termination of the EHV Contract. The Commission stated that while SMUD would take service under the rates, terms and condition of the CAISO Tariff, it would not be denied access to transmission service.

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[20] SMUD states that both it and Western entered into firm contracts for service over the Pacific Intertie at the same time, the contracts expire at the same time, and the circumstances that led to the executions were the same.

[21] Those utilities include PG&E, So Cal Edison, and SDG&E. *See* 105 FERC 61,358 (2003).

72. SMUD argues that it should be offered a long-term deal similar to the Transmission Exchange Agreement because it is similarly situated. We disagree. Here, SMUD is requesting a long-term "set aside" of capacity to satisfy its own business requirements and to its own benefit. This type of agreement is unlike the Transmission Exchange Agreement and would give SMUD an unfair advantage over potential competitors who must acquire transmission service in the CAISO Tariff Day-Ahead and Hour-Ahead markets. In contrast, the Transmission Exchange Agreement involves an exchange of capacity between two electric systems. The capacity acquired would then be made available to all market participants under the rates, terms, and conditions of either the CAISO Tariff or Western's OATT.[22]

73. SMUD argues that it has offered to exchange capacity with the CAISO, but that the CAISO refused to negotiate the offer. Accordingly, SMUD requests a hearing. SMUD has raised no issues of material fact that warrant a hearing. We deny the hearing request. Moreover, we will not direct the CAISO to negotiate an exchange arrangement with SMUD.

V. Docket No. ER04-690-000 & Docket No. ER04-690-001

A. Notice of Termination

74. In Docket No. ER04-690-000, PG&E submitted a notice of cancellation of PG&E Rate Schedule FERC No. 79 and "Related Rate Schedules" which includes Contract 2948A and several related transmission service contracts. PG&E also filed to cancel several related rate schedules, where the underlying contracts provide that they terminate when Contract 2948A terminates or where the contracts have already terminated.[23]

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[22] *See* Offer of Settlement in Docket No. ER04-688-001 at 2.

[23] For a complete list of the rate schedules requested to be terminated, see Appendix B. The transmission service contract between PG&E and Western for the San Luis Unit, Contract No. 14-06-200-2207A (Contract 2207A), expires April 1, 2016. Because this contract is currently under PG&E Rate Schedule FERC No. 79, but would be the only portion of that rate schedule to survive, PG&E proposes that this contract be assigned a new Rate Schedule number so that PG&E Rate Schedule FERC No. 79 can be cancelled in its entirety. Contract 2207A will be redesignated as Rate Schedule FERC No. 227.

PG&E indicates that Contract 2948A states that the contract shall remain in effect until 12:01 a.m. on January 1, 2005, and that the other contracts at issue expire contemporaneously with Contract 2948A. PG&E states that none of these contracts incorporates any right of first refusal, rollover right or contract extension right.

75. PG&E also submitted for filing three unexecuted agreements: (1) a Parallel Operations Agreement between PG&E and Western; (2) an Interconnection Agreement between PG&E and Western; and (3) a Service Agreement with Western under PG&E's Wholesale Distribution Tariff. PG&E explains that the unexecuted Parallel Operations Agreement and Interconnection Agreement are successor agreements to the terminating contracts and will permit Western to continue providing service to all of Western's customers receiving service under the contracts. PG&E notes that implementation of the successor arrangements requires no changes to the parties' physical interconnections.

76. Contract 2948A governs the interconnection of PG&E's and Western's transmission systems, Western's use of PG&E's transmission and distribution system, and the integration of Western's loads and resources into PG&E's system.[24] PG&E explains that Contract 2948A provided Western the ability to use power from PG&E's generators to increase the firm load carrying capability of Central Valley hydro generation. PG&E states that Contract 2948A allowed Western to "bank" surplus amounts of energy with PG&E during periods when Western's customers did not require the total output of the Central Valley generators and withdraw an equivalent amount of power when the Central Valley generation was insufficient to meet Western's customers' requirements. PG&E explains that Western's ability to use PG&E's generation to supplement Central Valley generation along with Western's access to the PG&E's transmission and distribution system permitted Western to market the firm Central Valley power to wholesale and preference retail customers in PG&E's service area.

77. After restructuring of the California electric markets, the CAISO assumed the role of control area operator for PG&E and So Cal Edison. Upon commencement of the CAISO operations, PG&E became Western's Scheduling Coordinator for purposes of Contract 2948A to ensure that Western's contract rights would be honored. As a result, PG&E concludes that it serves as a "middleman" between Western and the market for energy and between CAISO and Western for transmission service. PG&E states that

[24] PG&E states that Western is a federal power marketing agency that owns the Central Valley Project (Central Valley) transmission system in northern California, the Malin-Round Mountain transmission line that is a part of the Pacific Intertie, and a share of the 500 kV California-Oregon Transmission Project (COTP) that parallels the Pacific Intertie.

there is no reason for this role to continue upon termination of the contracts because wholesale services are available through various markets and replacement delivery service is available from the CAISO and PG&E. PG&E states that although the terms of the CAISO Tariff and PG&E's Wholesale Distribution Tariff differ from those in Contract 2948A, the Commission has concluded that service from the CAISO is an adequate substitute for service from PG&E under the Existing Transmission Contracts.[25]

78. PG&E explains that Rate Schedule 79 and other rate schedules for transmission service are presently treated as encumbrances on the CAISO's use of PG&E's facilities for transmission service. PG&E states that, as a result of the termination of Rate Schedule 79, the CAISO will need to amend the Transmission Control Agreement with the Participating Transmission Owners to reflect the end of these encumbrances. PG&E states that other agreements with the CAISO will need to be revised including: (1) the Responsible Participating Transmission Owner Agreement which provides for PG&E to act as Scheduling Coordinator for the existing contracts; (2) the Participating Generator Agreement which includes Western's Central Valley generators in PG&E's portfolio; and (3) the Meter Service Agreement which establishes terms for meters for participating generators.[26]

B. <u>Offer of Settlement</u>

79. In its offer of settlement in Docket No. ER04-690-001, PG&E filed revised versions of the unexecuted successor agreements to the above-referenced contracts to become effective January 1, 2005: a Parallel Operations Agreement between PG&E and Western and an Interconnection Agreement between PG&E and Western (Western Interconnection Agreement). PG&E also filed a service agreement with Western under its Wholesale Distribution Tariff and an Interconnection Agreement between PG&E and the United States Department of Energy Office of Science, Berkeley Site Office. The Parallel Operations Agreement governs the interconnection and coordinated operation of PG&E's and Western's transmission facilities in Northern California. The Western Interconnection Agreement governs the interconnection of PG&E's electric system with various loads served by Western.

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[25] *Sacramento Municipal Utility District*, 105 FERC ¶ 61,358 (2003), *reh'g denied* 107 FERC ¶ 61, 237 (2004).

[26] These filings are currently pending before the Commission.

80. PG&E explains that the Parallel Operations Agreement provides for continued interconnection of Western's and PG&E's facilities in northern California (including interconnections at the Round Mountain, Cottonwood and Tracy substations). The Parallel Operations Agreement includes provisions for the coordinated parallel operations of the two systems, including coordination of system planning and operations.

81. PG&E explains that the Western Interconnection Agreement governs the interconnection of PG&E's system with various loads served by Western. The proposed Western Interconnection Agreement designates the interconnection points and rights and obligations between the parties for the interconnection of Western's load connected to PG&E's transmission and distribution system. PG&E also explains that the Parallel Operations Agreement helps assure the continued reliable operation of the interconnected systems without either party imposing a burden on the other. PG&E indicates that only interconnection service is provided under the agreement.

82. PG&E notes that the proposed Western Interconnection Agreement covers interconnection with Western customers which do not have Interconnection Agreements with PG&E, because they do not qualify as eligible customers for Interconnection Agreements, but desire to continue receiving Western power. PG&E states that this group includes all Western end-use customers currently served under Contract 2948A. PG&E explains that for those customers who will continue to receive Western wholesale power, the power will be delivered under PG&E's Transmission Owner Tariff and PG&E's Wholesale Distribution Tariff. PG&E notes that end-use customers do not meet the criteria for a customer interconnection under those tariffs and, accordingly, Western will be responsible for its customers' facilities when they connect to PG&E.

83. The offer of settlement reserved one issue as unresolved – whether PG&E can lawfully impose or collect the Departing Load Charge[27] on federal power sales made to:

(1) end-use customers currently receiving PG&E retail electric service which

> (i) will receive power from Western for the first time on or about the effective date as "New Alottees" under Western's 2004 Power Marking Plan for the Sierra Nevada Customer Service region; or

[27] For the purpose of this settlement Departing Load Charges are certain charges imposed on current or former PG&E retail electric service customers under applicable tariffs on file with, or orders issued by, the California PUC under California law.

(ii) are designated as "First Preference" customers of Western's under the Flood Control Act of 1962[28] or the Trinity River Division Act;[29] or

(2) a federal agency serving end-use load of federal Central Valley facilities; or

(3) a federally recognized Indian Tribe.

84. The parties state that the applicable standard of review for future review of this settlement is the public interest standard of review.

C. Initial Comments

85. TANC, Vernon, NCPA, and Lassen each filed one set of comments to cover multiple dockets. Their requests are discussed elsewhere and will not be repeated here.

86. The Trinity Public Utility District (Trinity PUD) supports PG&E's proposed deletion of all references to Trinity PUD's facilities under the Western Interconnection Agreement, and therefore, the Western Interconnection Agreement will not apply in any manner to Trinity PUD. Trinity PUD takes no position regarding any other matter in the offer of settlement. The Pooling Authority, and the Calaveras Public Power Agency (Calaveras) also support the offer of settlement.

87. The California PUC states that for key pieces of the four settlements to be final, its approval was required for the issue of cost responsibility surcharge for departing load associated with Western's "split-wheeling" customers.[30] According to the California PUC, in accordance with California PUC Decision 03-09-052, the Departing Load Charges do not apply to, and PG&E is not responsible for paying, collecting or remitting any such Departing Load Charges with respect to, that portion of Western's "split wheeling" customers' load that was previously served at retail rates by PG&E. Further, the California PUC states that retail (end-use) customers served by PG&E are responsible for paying the cost incurred by the CDWR.

[28] 76 Stat. 1173, 1191

[29] 69 Stat. 719

[30] These are customers that take much of their power from Western directly, but who until October 1, 2004 received the rest of their power needs from PG&E at bundled retail rates.

88. Western's support is contingent upon the approval of all three Offers of Settlement in Docket Nos. ER04-688-000, ER04-690-000 and ER04-693-000. However, Western, Calaveras, and Tuolumne note that the responsibility to pay Departing Load Charges has been expressly reserved for subsequent resolution or litigation. Western reserved the right to litigate the applicability of the Departing Load Charge as it relates to new customers and new points of interconnection including those for first preference customers and federal project use loads.[31] According to Western, the Commission, and not the state, should determine the rate for wholesale transmission service to Western for service on PG&E's transmission system. With respect to Departing Load Charges, Calaveras states that federal law preempts any authority of the California PUC to assess charges against Calaveras. Western believes that this includes the determination on whether the state can impose an exit fee on customers served by Western. In addition, Western maintains that PG&E's proposal to pass through certain state-mandated charges is not only unjust and unreasonable, but that it is unconstitutional.

89. Calaveras and Tuolumne note that certain issues, including the rates to be paid by Western for wholesale distribution service to Calaveras and Tuolumne delivery points[32] and the right to raise, in a subsequent rate proceeding, a claim for credits or refunds for upgrade facilities paid for by Tuolumne or Calaveras and owned by PG&E, have also been expressly reserved for subsequent resolution or litigation.

90. Tuolumne, Calaveras, and the Pooling Authority support the settlement package, conditioned on their understanding and expectation that PG&E and Western will cooperate to ensure that respective delivery points for each entity that are currently receiving service, and all new points eligible for service under the settlement package, will be served under the new agreements and that the appropriate tables and maps will be revised as necessary in a compliance filing prior to commencement of service under the new agreements.

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[31] Western notes that, as part of the settlement, Western, PG&E, and the California PUC have resolved the application of the departing load charge as it applies to Western's existing customers. However the question of how the departing load charge applies to new customers remains.

[32] Both Tuolumne and Calaveras have reserved the right to participate in the rate proceeding filed by PG&E in Docket No. ER05-116-000, filed on November 1, 2005.

91. The National Aeronautics and Space Administration Ames Research Center (NASA-Ames) states that its support of the settlement is expressly conditioned on PG&E's continued commitment to enter into interconnection agreements with eligible wholesale customers. NASA-Ames also states that it reserves the right to challenge a facilities charge for the Eastside-Airfield/NRP to be proposed by PG&E in a future rate proposal under a Wholesale Distribution Tariff.

D. Reply Comments

92. The CAISO filed one set of reply comments to cover multiple dockets. Its comments are discussed above and will not be repeated here.

93. In response to issues raised by Tuolumne, Calaveras, and the Pooling Authority regarding delivery points eligible for service under the settlement package, PG&E states that it will work with these entities to assure the tables appended to the Wholesale Distribution Tariff Service Agreement accurately reflect the settlement agreements with these parties.

E. November 12 Comments

94. The Pooling Authority's supplemental comments are limited to a single aspect of the offer of settlement and new agreements: the agreement between PG&E and Western entitled "Non-Applicability of Departing Load Charges to Western-PG&E Split-Wheeling Customers." The Pooling Authority believes that PG&E should make explicit, in writing, the non-applicability of Rate Schedule E-SDL to customers that meet the definition of "Split-Wheeling Customers," but comply with the terms of the Non-Applicability agreement.

F. Discussion

95. The Commission finds the settlement is just and reasonable. Accordingly, we accept the proposed notice of cancellation of Rate Schedule 79 and related rate schedules and contracts. We also accept the proposed new Parallel Operations Agreement between PG&E and Western, Interconnection Agreement between PG&E and Western, Interconnection Agreement between PG&E and the Department of Energy, and service agreement under PG&E's Wholesale Distribution Tariff, to be effective January 1, 2005. In addition, we accept the proposed redesignation of Contract 2207A to Rate Schedule FERC No. 227.

1. **Departing Load Charges**

96. PG&E states that, for the purpose of this settlement, Departing Load Charges are imposed on current or former PG&E *retail electric service customers* under applicable tariffs on file with, or orders issued by, the *California PUC* under California law. The parties attempt to reserve this issue for the Commission to decide. However, we decline to do so. Calaveras argues that federal law preempts any authority of the California PUC to assess charges against it. Although federal law may control to whom this charge may be applied, which we are not deciding here, the Commission is not the proper forum to evaluate any such claims. The Departing Load Charges do not derive from tariffs on file with the Commission, but derive from decisions of the California PUC. Therefore, the Commission will not assert jurisdiction over to whom these charges apply.

2. **Wholesale Distribution Tariff Service Agreement**

97. PG&E's willingness to work with Calaveras, Tuolumne, and the Pooling Authority to ensure that the delivery points listed in the Wholesale Distribution Tariff Service Agreement are correct is noted. We will require PG&E to file a compliance filing within 30 days of the issuance of this order which reflects an accurate listing of the delivery points. This timeline, while aggressive, will ensure that all parties receive appropriate service when the new agreement goes into effect on January 1, 2005. As noted previously, Calaveras, Tuolumne and the Pooling Authority have reserved the right to challenge the rates to be paid under the Wholesale Distribution Tariff which has been submitted by PG&E in Docket No. ER05-116-000 and will be considered in a separate proceeding.

VI. **Docket No. ER04-693-000 & Docket No. ER04-693-001**

A. **Notice of Termination**

98. In Docket No. ER04-693-000, PG&E, Western, and the CAISO filed a notice of cancellation of the Coordinated Operations Agreement between So Cal Edison, SDG&E, and the Participants in the California-Oregon Transmission Project (Coordinated Operations Agreement),[33] to be effective January 1, 2005. The Coordinated Operations Agreement became effective in 1993 to accommodate the initial operation of the California-Oregon Transmission Project (COTP), a 500 kV line from the Captain Jack substation in Oregon to a terminus near PG&E's Tesla substation in central California.

[33] The Agreement coordinates operation of the Pacific Intertie and the California-Oregon Transmission Project and is designated as PG&E Rate Schedule FERC No. 146.

The COTP created a parallel third-circuit to the two existing 500 kV lines of the Pacific Intertie. PG&E states that the proposed termination of Contract 2947A in Docket No. ER04-688-000 triggers the termination of the Coordinated Operations Agreement.

99. In its March 31, 2004 filing, PG&E also filed an unexecuted successor agreement to the Coordinated Operations Agreement, entitled the Owners Coordinated Operation Agreement Among So Cal Edison, PG&E, SDG&E and Participants in the California-Oregon Transmission Project and Western Area Power Administration Governing the Coordinated Operation of the Pacific Intertie And California-Oregon Transmission Project (Owners Coordinated Agreement). PG&E states that the proposed successor agreement will enable the parties to continue to coordinate the operation of the California-Oregon Intertie, which is a system of three 500 kV lines in northern California that connects with similar facilities in southern Oregon and enables large inter-regional power transfers. According to PG&E, continued coordination will provide the parties, who own various parts of this system, with reliable operation, including, for example sharing curtailments on the California-Oregon Intertie in the event of facility outages.

100. PG&E states that under Contract 2947A, PG&E, So Cal Edison and SDG&E, collectively, have had the use of Western's Malin-Round Mountain 500 kV line, subject to reserving 400 MW for service to Western.[34] However, upon the termination of Contract 2947A, Western will have control of this line, which is a significant segment of one of the three lines comprising the California-Oregon Intertie and the Coordinated Operations Agreement will no longer be sufficient to assure coordination of the California-Oregon Intertie. As a result, PG&E filed the unexecuted Owners Coordinated Agreement to assure that the parties continue to realize the benefits of coordinated operation of these facilities.

[34] In 1998, when the CAISO began operation, the Companies turned operational control of their contractual entitlements to transmission service and their network transmission facilities over to the CAISO. Since that time, the CAISO has had operational control over this Western line.

B. Offer of Settlement

101. In the offer of settlement in Docket No. ER04-693-001, PG&E filed two agreements, a revised Owners Coordinated Operation Agreement (Owners Agreement)[35] and a new, California-Oregon Intertie Path Operating Agreement (Path Operating Agreement) to replace the Coordinated Operations Agreement.[36] The Owners Agreement governs the coordinated operation of the Pacific Intertie and COTP and maintains the system as coordinated facilities to benefit transfer capability. The Path Operating Agreement establishes an arrangement between the Owners and the path operator to ensure reliable operation of the California-Oregon Intertie and to maximize transfer capability on the Intertie, consistent with good utility practice. PG&E requests that these agreements be accepted and made effective January 1, 2005.

102. The parties state that the applicable standard of review for future review of this settlement is the public interest standard of review.

C. Initial Comments

103. TANC, Western, NCPA, Lassen, and the California PUC each filed one set of comments to cover each of the four dockets. Their requests are discussed above and will not be repeated here.

104. The Cities of Redding and Santa Clara, and the M-S-R Public Power Agencies (Cities/M-S-R) support the terms and conditions of the Owners Agreement with the specific understanding that all other agreements and arrangements in the Owners Agreement will be implemented as a package on January 1, 2005.[37]

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[35] Parties to this Agreement include So Cal Edison, PG&E, SDG&E, and Participants in the COTP and Western governing the coordinated operation of the Pacific Intertie and the COTP.

[36] Parties to this Agreement include So Cal Edison, PG&E, SDG&E, and Participants in the COTP and Western and the CAISO.

[37] Cities/M-S-R states that any material change or new condition in the Owners Agreement ordered to accommodate the proposal or objections of the CAISO, Bonneville or any other entity may effectively block the implementation and effective date of the Owners Agreement if such change is unacceptable to any designated parties to the Owners Agreement.

105. Bonneville supports the offer of settlement, with reservations. Bonneville explains that its interest in the proceeding is in maintaining the reliable operation of the California-Oregon Intertie and the operation of this intertie in accordance with the Western Electricity Coordinating Council's Reliability Management System requirement to reduce the California-Oregon Intertie flows within 20 minutes of reduced operating transfer capability limits. Bonneville believes that without a dynamic scheduling mechanism in place, more than one control area operator for California-Oregon Intertie could result in exceeding the 20 minute requirement to implement reduced operating limits.[38] Bonneville states that it believes that additional agreements or operating procedures are necessary to ensure smooth implementation of the Owners Agreement and Path Operating Agreement and the reliable operation of California-Oregon Intertie after January 1, 2005. Bonneville also argues that it is important that arrangements for the CAISO to be the interim control area operator for the COTP be in place on January 1, 2005.

106. Vernon filed in opposition to the settlements in each of the four dockets. Vernon, as a minority owner in the COTP is concerned that its costs may unduly rise because it is the only owner of COTP that is located in southern California. Vernon argues that the parties to the filing should be required to show that benefits will be derived by maintaining the Owners Coordinated Operation Agreement and that none of the minority owners of the COTP will be adversely affected by any new control area designation for the COTP.

107. Vernon states that section 2.10 of the Owners Agreement indicates that the COTP will be transferred to a different control area. Vernon requests that any acceptance of the Owners Agreement by the Commission should be based on the current standing of the COI facilities with respect to control area responsibilities. If in the future any facilities that are currently under the CAISO control are proposed to be transferred, the parties should be required to show the Commission that benefits will be derived and that none of the minority owners of COTP will be adversely affected by any new control area designation for the COTP.

108. Vernon states that under section 2.7 of the Path Operating Agreement, the CAISO has performed, and continues to perform, the functions of the path operator for the California-Oregon Intertie in coordination with the Pacific Northwest Path Operator. However, Vernon argues that, although the service provided by the CAISO under the

[38] Bonneville is concerned that adding a second control area for the California-Oregon Intertie in addition to the CAISO would increase the time to implement flow reductions on the intertie.

new agreement is not changing, the CAISO proposes to assess a new charge for such services. According to Vernon, the CAISO provides no support for the charge and does not set out any costs on which the charge is based. Vernon states that it has transferred operational control of its portion of the COTP to the CAISO and the CAISO does all scheduling on all the facilities and entitlements for the Participating Transmission Owners, and for these services Vernon is already assessed a GMC by the CAISO. Vernon asserts that this scheduling function is no different than the scheduling that the CAISO may do on other facilities that are not owned by Participating Transmission Owners and thus are not under the CAISO's operational control. Vernon adds that there is no rationale under which the CAISO should impose an additional charge on Participating Transmission Owners for costs associated with its existing CAISO operational control functions. If the new charge stems from the fact that there are facilities that make up the California-Oregon Intertie that have not been transferred to the CAISO under a Transmission Control Agreement, Vernon argues that the charge should not affect facilities that have been transferred.

109. Vernon suggests that section 9 of the Path Operating Agreement be modified to provide that only the transmission owners that do not currently pay the CAISO's GMC are charged for such service under section 2.7, or in the alternative, that transmission owners that are Participating Transmission Owners are not to be charged for such services.

D. Reply Comments

110. The CAISO filed one set of reply comments to cover multiple dockets. Its comments are discussed above and will not be repeated here.

111. In its reply comments, Bonneville reiterates its concern that without an interim control area agreement with the CAISO as interim control area operator, termination of the existing Coordinated Operations Agreement prior to the dynamic scheduling mechanism becoming operational would not be in the public interest. Bonneville agrees with TANC that Commission acceptance of the settlement in this docket should be conditioned on Commission acceptance and approval of an interim control area operator agreement with the CAISO.

112. In its reply comments, PG&E states that the CAISO filed, on November 1, 2004, the interim arrangement with the Commission in Docket No. ER05-155-000. PG&E concludes that this satisfies Bonneville's concern about a need for an interim arrangement for a control area operator for the COTP.

113. In its reply comments, TANC argues that Vernon's request that acceptance of the Owners Agreement be conditioned on establishing the benefits of a non-jurisdictional activity is unwarranted. TANC states that the Owners Agreement accommodates the reliable operation of COTP regardless of whether it is within the CAISO control area or another control area recognized by the Western Electricity Coordinating Council. TANC also states that Vernon has failed to establish that the Commission requires public utilities to receive approval for the selection of a control area for their transmission facilities. As a result, the Commission should reject Vernon's request for conditions as unwarranted and unsupported by the FPA.

114. In addition, TANC states that Vernon was well aware of the proposed change in the control area by virtue of its membership on the COTP Management Committee. TANC states that Vernon's attempt to draw the Commission into a COTP Management Committee issue is inappropriate and should be denied.

115. In response to Vernon's expressed concerns, PG&E states that the decision to move the COTP into the SMUD control area is irrelevant to this proceeding. PG&E states that Vernon needs to address this issue with the other owners of COTP.

E. November 12 Comments and CAISO's November 22 Answer

116. Vernon states that, for the reasons set out in its October 28, 2004 comments, it continues to oppose the offer of settlement, including the proposed Owners Agreement and Path Operating Agreement that are a part of that offer of settlement. Vernon notes that PG&E's expectation that it will soon supply signature pages is incorrect, as it continues to oppose the proposed agreements.

117. In its November 22 Answer, the CAISO states that it is indeed implementing a new charge and is doing so for two reasons: (1) the charges for the previous path operator service were included in the Coordinated Operations Agreement that is being terminated; and (2) the CAISO believes that consistent with a recent functional analysis of its GMC, the parties who are served by the California-Oregon Agreement should pay for such service. The CAISO further explains that it determined the cost of the special services that are provided by the path operator through an incremental cost analysis of the functions performed by the path operator versus the functions that would be performed if the CAISO were just a control area operator and not the path operator. The CAISO states

that any revenues received under the Path Operating Agreement will be credited as Other Revenue under the GMC and will be used to decrease the total GMC in the following year.[39] For this reason, the CAISO states there will be no "double collection" because costs associated with the CAISO's performance as the path operator will be reallocated from those paying the GMC to the parties to the Path Operating Agreement.

F. Discussion

118. The Commission finds the settlement is just and reasonable. Accordingly, we accept the proposed notice of cancellation of PG&E Rate Schedule 146 and accept the proposed new Owners Agreement and Path Operating Agreement, to be effective January 1, 2005.

119. In its reply comments, PG&E noted that on November 1, 2004, the CAISO filed an Interim COTP Operations Agreement in Docket No. ER05-155-000. PG&E asserts that this should satisfy Bonneville's concern. We agree that the filing of this agreement should address Bonneville's initial concern. If Bonneville has concerns about the specifics of the interim arrangement, it should voice these concerns in the context of the proceeding in Docket No. ER05-155-000.

120. We disagree with Vernon that parties should be required to show the Commission that benefits will be derived prior to any transfer of the COTP to a new control area. The decision to transfer control areas was made by Western using a public process. Commission approval for this decision is not required.

121. In its answer, the CAISO indicates that revenues collected under the Path Operating Agreement will be credited as Other Revenue under the GMC and will serve to reduce the GMC in the following year. As a result, charges for services under the Path Operating Agreement will not be collected in the GMC and will be collected only from those parties who benefit from the services under the Path Operating Agreement. Given this clarification, we agree that no "double" collection will occur. To the extent Vernon has concerns over the level of costs, the proper forum would be to address them in the GMC proceeding.

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[39] Specifically, the CAISO states that revenues received will be credited as Other Revenue (defined as Amounts booked to Account 456 sub-accounts, including but not limited to application fees, WECC reliability coordinator reimbursements, and fines assessed and collected by the CAISO) in accordance with Appendix F, Schedule 1 (Grid Management Charge), Part C – (Costs Recovered through the GMC).

122. The settlement states that if not all of the parties to the Owners Agreement and Path Operating Agreement are willing or able to sign one or both contracts by the time the Commission acts on this settlement, then the sponsoring parties request that the Commission accept for filing, as part of the settlement in this docket, the unexecuted agreements effective January 1, 2005. On November 4, 2004, PG&E filed the signature pages to these agreements without two signatures. Based on the fact that we have addressed Vernon's concerns, we accept the agreement, to be effective January 1, 2005.

The Commission orders:

(A) The notices of cancellation of the Rate Schedules listed in Appendix B are hereby accepted.

(B) The Rate Schedules listed in Appendix B are hereby accepted, subject to compliance filing as discussed in the body of this order, to be effective January 1, 2005.

(C) The CAISO is hereby directed to submit, within thirty (30) days of the date of issuance of this order, a compliance filing amending the CAISO Tariff to provide that the 1,200 MW of capacity that the CAISO is entitled to under the Transmission Exchange Agreement is deemed to be a part of the CAISO controlled grid for the provision of transmission service on that capacity.

(D) PG&E is hereby directed to submit, within thirty (30) days of the date of issuance of this order, a compliance filing which reflects an accurate listing of the delivery points at issue in Docket No. ER04-690.

By the Commission. Chairman Wood concurring with a separate statement.
Commissioner Kelly dissenting in part with a separate statement attached.

(S EA L)

Magalie R. Salas,
Secretary.

Appendix A
Interventions and Comments

Interventions

Docket No. ER04-688-000 Interventions

Bonneville Power Agency*
California Department of Water Resources
California Independent System Operator Corporation*
California Public Utilities Commission
Calpine Corporation *
City of Redding, California
City of Roseville
City of Santa Clara, California
Lassen Municipal Utility District
Modesto Irrigation District
M-S-R Public Power Agency
Northern California Power Agency
Placer County Water Agency
Powerex Corp.
Sacramento Municipal Utility District
Southern California Edison Company
Transmission Agency of Northern California
Turlock Irrigation District
United States Department of Energy Office of Science, Berkeley Site Office
Western Area Power Administration

Docket No. ER04-689-000 Interventions

Bonneville Power Agency*
California Department of Water Resources – State Water Project
California Independent System Operator Corporation*
California Public Utilities Commission
City of Redding, California
City of Santa Clara, California
Metropolitan Water District of Southern California
Modesto Irrigation District
M-S-R Public Power Agency
Northern California Power Agency

Placer County Water Agency
Powerex Corp.
Sacramento Municipal Utility District
Southern California Edison Company
Transmission Agency of Northern California
Turlock Irrigation District

Docket No. ER04-690-000 Interventions

Bonneville Power Agency*
Calaveras Public Power Agency
California Independent System Operator Corporation*
California Public Utilities Commission
Calpine Corporation *
City of Redding, California
City of Roseville
City of Santa Clara, California
Lassen Municipal Utility District
Modesto Irrigation District
M-S-R Public Power Agency
National Aeronautics and Space Administration – AMES Research Center
Northern California Power Agency
Placer County Water Agency
Power and Water Resources Pooling Authority
Powerex Corp.
Sacramento Municipal Utility District
Transmission Agency of Northern California
Trinity Public Utility District
Tuolumne Public Power Agency
Turlock Irrigation District
United States Department of Energy Office of Science, Berkeley Site Office
Western Area Power Administration

Docket No. ER04-693-000 Interventions

Bonneville Power Administration
California Department of Water Resources
California Independent System Operator Corporation*
California Public Utilities Commission

Calpine Corporation *
City of Redding, California
City of Roseville
City of Santa Clara, California
Lassen Municipal Utility District
Metropolitan Water District of Southern California
Modesto Irrigation District
M-S-R Public Power Agency
Placer County Water Agency
Powerex Corp.
Sacramento Municipal Utility District
Southern California Edison Company
Transmission Agency of Northern California
Turlock Irrigation District
United States Department of Energy Office of Science, Berkeley Site Office
Western Area Power Administration

* Intervenors filed out of time

Comments

Docket No. ER04-688-000 Comments

Initial Comments

California Public Utilities Commission
City of Vernon
Lassen Municipal Utility District
Northern California Power Agency
Powerex Corporation
Southern California Edison Company
Transmission Agency of Northern California
Western Area Power Administration

Reply Comments

California Independent System Operator Corporation
Pacific Gas and Electric Company
Sacramento Municipal Utility District

Docket No. ER04-689-000 Comments

Initial Comments

California Department of Water Resources – State Water Project
California Public Utilities Commission
City of Vernon
Northern California Power Agency
Sacramento Municipal Utility District
Transmission Agency of Northern California

Reply Comments

California Independent System Operator Corporation

Docket No. ER04-690-000 Comments

Initial Comments

Calaveras Public Power Agency
California Public Utilities Commission

City of Vernon
Lassen Municipal Utility District
National Aeronautics and Space Administration – AMES Research Center
Northern California Power Agency
Power and Water Resources Pooling Authority
Transmission Agency of Northern California
Trinity Public Utility District
Tuolumne Public Power Agency
Western Area Power Administration

Reply Comments

California Independent System Operator Corporation
Pacific Gas and Electric Company

Docket No. ER04-693-000 Comments

Initial Comments

Bonneville Power Administration
California Public Utilities Commission
Cities of Redding and Santa Clara and the M-S-R Public Power Agencies
City of Vernon
Lassen Municipal Utility District
Northern California Power Agency
Transmission Agency of Northern California
Western Area Power Administration

Reply Comments

Bonneville Power Administration
California Independent System Operator Corporation
Pacific Gas and Electric Company
Transmission Agency of Northern California

Appendix B
Rate Schedules and Contracts Implicated in this Order

	Contracts and Settlement Agreements	Contract Titles or Subjects
ER04-688-000		
Cancels	PG&E Rate Schedule FERC No. 35	Contract with California Companies for Extra High Voltage Transmission and Exchange Service (Contract No.14-06-200-2947A)
	SoCal Edison Rate Schedule FERC No. 37	Contract with California Companies for Extra High Voltage Transmission and Exchange Service (Contract No.14-06-200-2947A)
ER04-689-000		
Cancels	PG&E Rate Schedule FERC No. 36	Contract between California Companies and State of California Department of Water Resources for Extra High Voltage Transmission and Exchange Service
	PG&E Rate Schedule FERC No. 37	Contract between California Companies and Sacramento Municipal Utility District for Extra High Voltage Transmission and Exchange Service
	SoCal Edison Rate Schedule FERC No. 38	Contract between California Companies and State of California Department of Water Resources for Extra High Voltage Transmission and Exchange Service
	SoCal Edison Rate Schedule FERC No. 39	Contract between California Companies and Sacramento Municipal Utility District for Extra High Voltage Transmission and Exchange Service
Accepts	PG&E First Revised Rate Schedule FERC No. 77, First	Amended and Restated Amendment No. 4 to the

	Revised Sheet Nos. 115 to 141	Comprehensive Agreement Between CDWR and PG&E
ER04-690-000		
Cancels	PG&E Rate Schedule FERC No. 79, which includes	
	• Contract No. 14-06-200-2948A	Western Contract with PG&E for the Sale, Interchange and Transmission of Electric Capacity and Energy
	• Contract No. 14-06-200-2979A	Western Contract with PG&E for Transmission Service for the Wintu Pumping Plant of the Cow Creek Unit
	• n/a	Transmission and Exchange Service for Westlands Water District
	• n/a	Transmission and Exchange Service for Arvin-Edison Water Storage District
	• 96SNR00085	1996 Rate Schedule Agreement between PG&E and Western
	• n/a	Various amendments, settlement and letter agreements (and reserved sheets) to 2948A
	• 93-SAO-18003	Settlement Agreement between PG&E and Western (Project Dependable Capacity)
	• 94-SAO-18008	Metering and Power Accounting Contract with PG&E (Trinity County and Hayfork)
	• 94-SAO-00025	Agreement between Trinity County Public Utilities District, PG&E and Western (re: planned maintenance outage)
	• 95-SAO-00079	Agreement between Trinity County PUD, PG&E and Western (re: planned maintenance outage)
	• 93-SAO-90007	Western Systems Power Pool Agreement with PG&E
	• 95-SAO-0071	Letter of Agreement, 2948A

	• n/a	Section IV.B. of the Settlement Agreement Among PG&E, NCPA, City of Roseville, CA, City of Santa Clara, CA as Silicon Valley Power, and the CAISO (July 12, 2002)
	PG&E Rate Schedule FERC No. 75	Agreement for Distribution of Electric Capacity and Energy by PG&E for the Calaveras Public Power Agency
	PG&E Rate Schedule FERC No. 76	Agreement for Distribution of Electric Capacity and Energy by PG&E for the Tuolumne County Public Power Agency
	PG&E Rate Schedule FERC No. 63	Western Transmission Service to Delta Pumping Plant
	PG&E Rate Schedule FERC No. 81	Western Transmission Service for Healdsburg, Lompoc and Ukiah
	PG&E Rate Schedule FERC No. 126	Western Transmission Service to Sonoma County Water Agency
	PG&E Rate Schedule FERC No. 151	Western Letter Agreement Concerning Cottonwood Station Work Related to Construction of the COT Project
	PG&E Rate Schedule FERC No. 152	Western's Roseville substation SFA
	PG&E Rate Schedule FERC No. 147	Settlement Agreement for Power Delivery to the United States Department of Energy Laboratories, Supplement No. 8 (Agreement No. 98-SNR-00112)
Accepts	PG&E Rate Schedule FERC No. 227 (formerly a part of Rate Schedule FERC No. 79)	Western/PG&E Contract for Transmission Service for San Luis Unit (Contract No. 14-06-200-2207A)
	First Revised Rate Schedule FERC No. 147 (revised to eliminate Supplement No. 8)	PG&E, Western, U.S. Department of Energy, San Francisco Field Office Settlement Agreement
	Substitute Service Agreement	Interconnection Agreement

	No. 59 under PG&E FERC Electric Tariff, Sixth Revised Volume No. 5	Between PG&E and Western (Contract No. 04-SNR-00787)
	Substitute PG&E Rate Schedule FERC No. 228	Parallel Operations Agreement between PG&E and Western (Western Contract No. 04-SNR-00786)
	Service Agreement No. 63 under PG&E FERC Electric Tariff, Sixth Revised Volume No. 5	Interconnection Agreement between PG&E and United States Dept. of Energy Office of Science, Berkeley Site Office on Behalf of the Northern California Laboratories
	Substitute Service Agreement No. 17 under PG&E FERC Electric Tariff, First Revised Volume No. 4	Service Agreement for Wholesale Distribution Service to Western under the PG&E Wholesale Distribution Tariff (Western Contract No. 04-SNR-00789)
ER04-693-000		
Cancels	PG&E Rate Schedule FERC No. 146	
Accepts	Substitute PG&E Rate Schedule FERC No. 229	Owners Coordinated Operating Agreement (Western Contract No. 04-SNR-00787)
	CAISO Rate Schedule FERC No. 50	California-Oregon Intertie Path Operator Agreement

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket Nos. ER04-688-000
ER04-688-001
ER04-689-000
ER04-689-001
ER04-690-000
ER04-690-001
ER04-693-000
ER04-693-001
Not consolidated

(Issued December 3, 2004)

KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the "just and reasonable" standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves settlements that provide the public interest standard of review shall apply to any future modifications, including "any investigation that the Commission may initiate under Section 206."

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Suedeen G. Kelly